

THOM SEAL ET AL.

IBLA 85-97

Decided April 30, 1986

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the Shangrila Millsite null and void ab initio. ORMC 073017.

Affirmed.

1. Small Tract Act: Classification

Lands classified as available for lease or sale under the Small Tract Act are segregated from all appropriation under the public land laws, including the mining laws, and mineral locations made on such lands are null and void ab initio.

2. Small Tract Act: Classification

Lands segregated from mineral location by classification under the Small Tract Act remain segregated until administrative action is taken to remove the classification.

APPEARANCES: David B. Hydes, Esq., John Day, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Thom Seal and others having an interest in the Shangrila Millsite (ORMC 073017) have appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated October 9, 1984, declaring the millsite null and void ab initio because it was located on land not available for location. The basis for the decision was that the land was segregated from appropriation upon the issuance of Small Tract Classification Order, Oregon 05184.

Appellants acknowledge the land was segregated, but claim that because the Small Tract Act was repealed in 1976, the land reverted to its previous unclassified status when the Small Tract Act lease issued for it expired on May 31, 1984, and that the Department of the Interior was without authority to continue the classification. In the alternative, appellants argue that under the Small Tract Act and its regulations there was an obligation to re-lease the property or sell it.

The Shangrila Millsite is located on 4.993 acres in the SW 1/4 NE 1/4, sec. 14, T. 12 S., R. 33 E., Willamette Meridian in an area of Grant County, Oregon, in which there has been mining activity since at least the 1880's. The land on which the millsite is located was the site of an earlier millsite for which a patent application was made under the name Ophir Millsite, and was included in mineral survey 898 A & B conducted in 1951. Land classification and appraisal reports dated August 29, and November 2, 1956, state the patent application for the millsite was withdrawn, apparently as a result of contest proceedings. Based on the reports, on February 4, 1957, the land was classified for lease under the Small Tract Act, ^{1/} pursuant to the application filed by Inez Dove, OR 05184. A 3-year lease was subsequently issued to Inez Dove effective June 1, 1958. Based on documents in the case file, it appears Dove had been the millsite patent applicant and the lease was issued to allow her to obtain the benefit of her investment in buildings on the land. The lease was apparently renewed in 1961, and in 1964 a new lease was issued to her for a term of 20 years. It was subsequently assigned to Rose Anne Montague Hager, and by instruments dated May 22 and 25, 1984, the lease and buildings upon it were purchased by Dennis Montague, Chuck Church, and Thom Seal under the name Shangrila Mining. The record does not indicate the latter assignment was approved by BLM.

Three location notices are of concern in the present appeal. All three are printed forms for lode locations which have been adapted to millsite locations and differ primarily as to the stated date of location. The first states that the Shangrila Millsite was located March 21, 1984; the second that it was relocated June 1, 1984; and the third that it was relocated November 2, 1984. All three were recorded at Grant County, Oregon, and were filed with BLM. The last was recorded and filed after the initiation of the present appeal, was not accompanied by the required filing fee, and has not been accepted by BLM for recordation. It was not before BLM when the agency issued its decision, and we consider it in this opinion only to the extent that, as an additional relocation of the Shangrila Millsite, its legal status is identical to that of the relocation of June 1, 1984.

[1] The Small Tract Act, as amended, granted the Secretary of the Interior authority to lease or sell, under circumstances specified in the Act, tracts not in excess of 5 acres which he classified as "chiefly valuable for residence, recreation, business, or community site purposes." 43 U.S.C. § 682a (1970). The promulgated under the Act provided that "[l]ands classified under the act of June 1, 1938, as amended, will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof." 20 FR 366 (Jan. 15, 1956; codified at 43 CFR 257.3(b) (1954, Supp. 1959)). Because the land in question was classified under the Small Tract Act and segregated from location under the mining laws, the location of the Shangrila Millsite on March 21, 1984, was

^{1/} The Small Tract Act was originally enacted as ch. 317, 52 Stat. 609 (1938). As subsequently amended by ch. 298, 59 Stat. 467 (1945), and ch. 270, 68 Stat. 239 (1954), it was codified at 43 U.S.C. §§ 682a-682e (1976). The Act was repealed by section 702 of the Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2787, 2789 (1976).

null and void ab initio. J. S. Bowers, 79 IBLA 298 (1984); Ernest L. Brewington, 73 IBLA 167 (1983); Leo J. Kottas, 73 I.D. 123, 127-28 (1966).

[2] Appellants' additional locations are both denominated by them to be relocations. A relocation is adverse to the original location. R. Gail Tibbets, 43 IBLA 210, 86 I.D. 538 (1979), overruled in part on other grounds, Hugh B. Fate, Jr., 86 IBLA 215 (1985). They argue that because the Small Tract Act was repealed, classification of the land under the Act must have expired with the lease so that the relocation of June 1, 1984 was valid. Appellants are correct that the Small Tract Act was

repealed. All portions of the Act were included among the statutes repealed by section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, 90 Stat. 2787, 2789 (1976). Appellants are mistaken, however, as to the termination of the classification of the land. FLPMA section 701(c) provided that "[a]ll withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law." 90 Stat. 2786(1976). Thus, the land remains segregated subject to the classification until modified by BLM. Accordingly, upon expiration of the lease on May 31, 1984, the land remained segregated from mineral location, and BLM properly declared the relocation of the Shangrila Millsite on June 1, 1984, null and void ab initio. See Ernest L. Brewington, supra at 168. Similarly, assuming BLM had not removed the classification, appellants' second relocation of the Shangrila Millsite on November 2, 1984, would also be null and void ab initio.

Appellants alternatively argue that BLM has an obligation arising from the Small Tract Act and the regulations issued under it to either sell or re-lease the property to them. They cite no authority in support of this allegation. We have reviewed the terms of the Act, the regulations, and the expired lease and find no language supporting such a claim of right. Nor do we find any equitable ground supporting appellants' claim. While the lease was originally issued for residential purposes to Inez Dove to allow her to benefit from her investment in buildings on her millsite location, appellants purchased their interest in the lease with at least constructive knowledge of its termination date.

Finally, we note that several arguments raised by appellants relate to a plan of operations filed with BLM in which the Shangrila Millsite was included. We do not address these arguments because they are not relevant to our review of the propriety of the BLM action which is the subject of this appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly

Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

